

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

RECEIVED

FEB - 2 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Station
(Johnstown, New York and
Altamont, New York)

)
)
)
)
)
)
)

MM Docket No. 98-____
RM-_____

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

PETITION FOR RULE MAKING

Hometown Broadcasting Corp. ("Hometown"), licensee of FM radio broadcast station WSRD, Johnstown, New York ("WSRD"), by its attorneys, hereby petitions the Commission to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, to reallocate Channel 285A from Johnstown, New York to Altamont, New York, and to modify WSRD's license accordingly.

I. PRELIMINARY STATEMENT

Under Section 1.401 of the Commission's Rules, any interested party may petition the Commission for the amendment of a rule or regulation. 47 C.F.R. § 1.401(a) (1997). Hometown is filing this petition to request that the Commission amend its FM Table of Allotments as set forth in Section 73.202(b) of its Rules. 47 C.F.R. § 73.202(b) (1997). As shown below, because this proposal would result in a preferential arrangement of allotments under the Commission's

No. of Copies rec'd
List ABCDE

024

guidelines, the FM Table of Allotments and the license for WSRD(FM) should be modified accordingly.

II. ARGUMENT

A. Hometown's Proposal Is Not Subject to Any Competing Expressions of Interest

Hometown is filing this Petition pursuant to Section 1.420(i) of the Commission's Rules, which allows the FCC to modify a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. This modification may be made so long as the proposed allotment is mutually exclusive with the licensee's present assignment. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Modification Report and Order"). As demonstrated by the Technical Exhibit attached hereto as Exhibit 1 (Figure 3), the requested reallocation of Channel 285A to Altamont, and the proposed modification of WSRD's license, are mutually exclusive with WSRD's currently-authorized operations. Accordingly, Hometown may petition the Commission to reallocate Channel 285A without the Commission granting an opportunity to other parties to file any competing expressions of interest.

B. Hometown's Proposal Meets the FCC's Minimum Separation Requirements

Under Section 73.207 of the Commission's Rules, the Commission may accept petitions to amend its FM Table of Allotments as long as the reference points of the proposed community meet all of the minimum distance separation requirements. 47 C.F.R. 73.207(a) (1997). As shown in Exhibit 1 (Figure 1), the reallocation of Channel 285A to Altamont complies with the Commission's minimum distance separation requirements, and therefore is acceptable.

C. Hometown's Proposal Meets the FCC's Prerequisites and FM Allotment Priorities

The Commission has set forth two prerequisites before it will approve a city of license change request: (1) the former community shall not be deprived of its only existing local aural transmission service; and (2) the modification shall result in a net service benefit for the communities involved (i.e., "the plan would result in a preferential arrangement of allotments") under current FM allotment priorities. Modification Report and Order, 4 FCC Rcd at 4874.

Under the Commission's allotment criteria, priority for service is in the following order: (1) provision for first full-time aural reception service; (2) provision for second full-time aural reception service; (3) provision for first local transmission service; and (4) provision for other public interest factors. Change of Community Report and Order, 4 FCC Rcd at 4873.

1. First Prerequisite: Reallotment of WSRD Will Not Deprive Johnstown, New York of its Only Existing Aural Broadcast Service

In addition to WSRD(FM), day-time AM broadcast station WIZR is licensed to Johnstown, New York. WIZR(AM) is owned and operated by Hometown. Therefore, this proposed allotment satisfies the first prerequisite as Johnstown would continue to maintain a local transmission service as provided by WIZR(AM). The Commission has held that a daytime AM station constitutes a local aural transmission service for purposes of an FCC change in a channel allotment. Rose Hill and Trenton, North Carolina, 10 FCC Rcd 6611 (1995); Scotland Neck and Pinetops, North Carolina, 7 FCC Rcd 5113 (1992).

2. Second Prerequisite: The Relocation of WSRD(FM) to Altamont, New York Constitutes a Preferential Arrangement of Allotments Under Established Commission Priorities

a. The First Two FM Allotment Priorities are not Material

As shown in Exhibit 1 (Figure 4 and 5), Johnstown receives at least 15 full-time AM and FM broadcast reception services, and Altamont currently receives at least 21 full-time aural broadcast reception services. Therefore, the first two allotment priorities set forth by the Commission are not material to a public interest determination in this proceeding as both communities already receive at a minimum more than 15 full-time aural broadcast reception services. See Winner and Wessington Springs, South Dakota, 11 FCC Rcd 6663 (1996).

b. The Third Allotment Priority, First Local Transmission Service, is Decisionally Favorable in this Proceeding

The third of the Commission's allotment priorities is, however, material, as Hometown's proposal to relocate WSRD would provide Altamont with its first local aural transmission service. Indeed this priority is decisionally favorable to a consideration of Hometown's Petition.

i. Altamont, New York is a "Community" Under the Commission's Allotment Criteria

Altamont exhibits substantially all of the community indicia that the Commission has used in the past in determining whether a community deserves to have its own first local broadcast service. See, e.g., Arcadia and Fort Meade, Florida, MM Docket No. 97-159 (Released July 18, 1997). Altamont is a village in the township of Guilderland. Altamont has a population of 1,519 people, according to the 1990 United States Census. The New York State Data Center, however, which works in cooperation with the Census Bureau, reports that as of July 1, 1996, Altamont's population had increased by 13.82% to 1,729 people, and it is expected to grow an additional 10 to 15% by 2000. Altamont has its own locally elected mayor and

governing council, as well as its own police, fire, rescue squad, water and sewer departments, public library and The Enterprise, the Altamont weekly newspaper. Altamont collects its own village taxes. The population is diverse, served by four different churches, numerous commercial businesses, and various community organizations, including the Peter G. Young Community Center, a chapter of the Veteran of Foreign Wars, the American Legion, and the Altamont Community Caregivers. Annually 200,000 to 250,000 people attend the Altamont Fair, the Altamont Antique and Craft show, the Altamont Scottish games and the Altamont Political Picnic.

Altamont is confronting many challenges in its efforts to meet the needs of its rapidly growing community. A major overhaul of Altamont's major roads is scheduled to further promote its local business organizations. The United States Transportation Board has allocated money to allow Altamont to build a new downtown park.

The Commission has allotted numerous FM channels to other villages in the State of New York that have a population equal to or substantially less than the population in Altamont. These New York FM Allotments as set forth in Section 73.202(b) of the Commission's Rules are as follows:

<u>Name of Village</u>	<u>Channel Allotment</u>	<u>1990 Census Population</u>
Cape Vincent	234A, 274A	683
Chateaugay	234C2	845
Cherry Valley	270B	617
Copenhagen	294C3	876
Dundee	240A	1,588
East Hampton	244A	1,402
Hammondsport	252A	929
Jeffersonville	271A, 291A	484
Lake George	253A	933
Mexico	280A	1,555
Morristown	275A	490

<u>Name of Village</u>	<u>Channel Allotment</u>	<u>1990 Census Population</u>
Remsen	228A	518
Schoharie	247A	1,045
Stillwater	267A	1,531
Wurtsboro	247A	1,055

47 C.F.R. § 73.202(b) (1996).

As shown, because Altamont possesses the requisite “social, economic and cultural components that are commonly associated with community status,” see Semora, North Carolina, 5 FCC Rcd 934 (1990), and because the Commission has a long-established precedent of granting FM channel allotments to villages in New York state, Altamont should be considered a “community” worthy of its own first local transmission service.

ii. Altamont is not located within an Urbanized Area

The relocation of WSRD to Altamont does not implicate the Commission’s Urbanized Area “presumption.” When an applicant proposes an allotment to a community for its first local service preference, and that community is located in an Urbanized Area, or the 70 dBu contour of the station covers 50% or more of an Urbanized Area, a presumption of interdependence is created. See Faye and Richard Tuck, 3 FCC Rcd 5374 (1988). The Census Bureau defines an Urbanized Area as consisting of a central community and adjacent densely settled areas that together have a minimum of 50,000 persons. If the presumption of interdependence is not rebutted, the community is credited with all the local transmission services licensed to communities within the Urbanized Area. Id.

Exhibit 1 (Figure 2) shows that Altamont is not within any Urbanized Area, including the Albany-Troy-Schenectady Urbanized Area (“Albany Urbanized Area”). Moreover,

the proposed allotment at its nearest point from the Albany Urbanized Area will not place a 70 dBu signal over 50% or more of that Urbanized Area. Indeed, the 70 dBu signal will cover only 2% of the Albany Urbanized Area. See Exhibit 1 (Figure 2). Thus, Altamont properly deserves a first local service preference, as it should not be credited with the aural broadcast transmission services licensed to the Albany Urbanized Area.

c. The Fourth Allotment Priority, the Public Interest Factor, is Served as the Relocation Will Result in a Substantial Net Gain in Area and People Served by WSRD

Because this proposed relocation involves a change in the WSRD transmitter site, Exhibit 1 (Figures 3 and 6) includes an analysis of the gain and loss areas that would result from the WSRD transmitter relocation. See Homestead and North Miami Beach, Florida, 10 FCC Rcd 13,149 (1995). As shown, the proposed reallocation will result in an increase of 398,999 people served by the WSRD 60 dBu contour, and a resultant gain in the area it serves of 2,283 square kilometers. The loss from the proposed reallocation consists of 1,936 square kilometers and 103,602 people. Despite this loss, there is an overall net gain of 347 square kilometers and 295,397 people resulting from this allotment. Moreover, the Commission has consistently held that any loss area will not be considered underserved if that area continues to be served by five or more full-time aural services. See, e.g., Canovanas, Puerto Rico, MM Docket No. 91-259 (released July 2, 1997); LaGrange and Rollingwood, Texas, 10 FCC Rcd 3337 (1995); Family Broadcasting Group, 53 RR 2d 662 (Rev. Bd. 1983). As shown in Exhibit 1 (Figure 4), the loss area will continue to be served by at least 6 broadcast services, and therefore will continue to be served by an abundance of broadcast voices. Because there is an overall substantial net gain in the WSRD service area from this proposed allotment, the relocation is clearly in the public

interest. Parker and St. Joe, Florida, MM Docket No. 9532, RM-8545 (released January 30, 1996).

Further, as shown above, allotting a first local aural transmission service to Altamont will benefit the public interest by promoting competition between the station and the weekly newspaper that is currently published in Altamont.

D. Hometown's Declaration of Intent

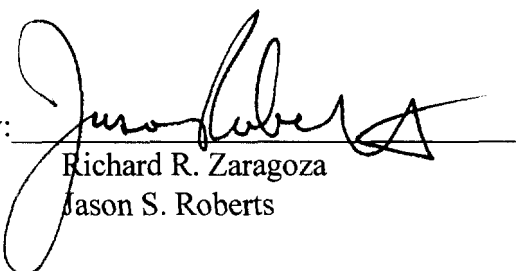
If the proposal set forth herein is adopted, Hometown intends to promptly file the appropriate application for Channel 285A at Altamont, New York, and will promptly construct the facilities contemplated therein.

III. CONCLUSION

For the foregoing reasons, Hometown Broadcasting Corp. respectfully requests the Commission promptly initiate the Rule Making requested herein to reallocate Channel 285A from Johnstown, New York to Altamont, New York and to modify the license of radio station WSRD(FM) accordingly.

Respectfully submitted,

HOMETOWN BROADCASTING CORP.

By: 
Richard R. Zaragoza
Jason S. Roberts
Its Attorneys

FISHER WAYLAND COOPER LEADER
& ZARAGOZA L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006
(202) 659-3494

Dated: February 2, 1998

I:\DATA\USER\RBHAR\WP51DOC\JRPLEAD\4481-000.PET

Exhibit 1
Hometown Broadcasting Corp.
Petition for Rule Making
Amendment of Section 73.202(b) Table of Allotments
WSRD, Johnstown, New York

ENGINEERING EXHIBIT

ENGINEERING EXHIBIT
IN SUPPORT OF RULE MAKING
HOMETOWN BROADCASTING CORP.
ALTAMONT, NEW YORK
CHANNEL 285A 6 KW 100 M

Engineering Statement

The Engineering Exhibit of which this statement is part was prepared on behalf of Hometown Broadcasting Corp., licensee of FM broadcast station WSRD, Johnstown, New York in support of a petition to amend the Table of Allotments, Section 73.202(b), *Table of FM Allotments*.

The Exhibit consists of this Statement and the following Figures:

- | | |
|----------|--|
| Figure 1 | Table of Pertinent Separations
For Allotment of Channel 285A
To Altamont, New York |
| Figure 2 | Maps Showing Predicted Contours at
Altamont and Area to Locate
Channel 285A and Albany Urbanized
Area |
| Figure 3 | Map Showing Existing and Predicted
60 dBu Contours for WSRD |
| Figure 4 | Map Showing "Other Services"
Available Within the Existing and
Proposed WSRD 60 dBu Contours |
| Figure 5 | Tabulation of Stations Providing
Other Service |
| Figure 6 | Tabulation of Populations and
Areas. |

Altamont, New York

Page 2 of 5

Proposed Change in Allotments

The following change in the Table of FM Allotments is proposed:

<u>Community</u>	<u>Existing</u>	<u>Proposed</u>
Johnstown, NY	285A	- -
Altamont, NY	- -	285A

Altamont, New York is located in Albany County. According to the 1990 Census, the city had a population of 1,519 and the county 292,594 persons. Altamont is not located in any urbanized area as defined by the Bureau of the Census.

After the proposed change in FM channels, Johnstown, NY will continued to have local broadcasting service from AM station WIZR. Station WIZR operates on 930 kilohertz, employing power of 1,000 watts, daytime only.

Minimum Distance Separation

Figure 1 is a tabulation of pertinent distance separations for use of FM channel 285A at Altamont from an assumed transmitter location having the following NAD 27 geographic coordinates:

Altamont, New York

Page 3 of 5

42° 38' 07" North Latitude

74° 04' 30" West Longitude

The use of channel 285A at this reference location meets all separation requirements to pertinent existing and proposed stations, except for the existing operation of WSRD at Johnstown, NY. Use of channel 285A at this site therefore comports with the requirements of Section 73.207 of the FCC rules.

Coverage Contours.

Sheet 1 of Figure 2 is a map showing theoretical 70 dBu (3.16 mV/m) and 60 dBu (1.0 mV/m) coverage for a Class A station operating with effective radiated power of 6 kilowatts and antenna height above average terrain of 100 meters. The predicted 70 dBu contour totally encloses Altamont.

Altamont is located outside of the Albany-Schenectady-Troy Urbanized area as shown on Sheet 2 of Figure 2 and the predicted 70 dBu contour penetrates two percent of the Albany urbanized area.

Figure 3 is a map which shows the existing (based on effective radiated power of 6 kW and antenna height above average terrain of 91 meters) and proposed 60 dBu (1.0 mV/m) contour for WSRD as it is now licensed at

Altamont, New York

Page 4 of 5

Johnstown and as proposed at Altamont. A map showing these contours and the coverage contours of "other AM and FM services" is shown in Figure 4. In determining "other service", the 60 dBu contour was employed for FM stations and the 0.5 mV/m contour for AM stations. Contours were determined in the manner described in the FCC rules.

Based on Figure 3 it has been determined that a minimum of fifteen stations serve Johnstown, NY and a minimum of twenty-one stations serve Altamont, NY. This determination excludes service from WSRD.

Within the existing 60 dBu contour of WSRD there is a minimum of six other services available. Within the predicted WSRD 60 dBu contour at Altamont there is a minimum of two services available. Figure 4 shows the areas of low service. The areas identified with letters A, B and C are areas of 2, 3 and 4 services, respectively. All other areas receive five or more services.

Figure 5 is a tabulation of stations which provide other service within the existing or proposed WSRD 60 dBu contour.

Altamont, New York

Page 5 of 5

Populations and Areas

Populations and areas for the existing and proposed operation of WSRD are tabulated in Figure 6. Population figures are based on the 1990 census and were determined by summing the centroids of each enumeration district falling within the contour of interest. Areas were determined by numerical integration.



Louis R. du Treil, Sr.

du Treil, Lundin & Rackley, Inc.
240 North Washington Boulevard
Suite 700
Sarasota, FL 34236

(941) 366-2611

January 28, 1998

Figure 1

ENGINEERING EXHIBIT
IN SUPPORT OF RULE MAKING
HOMETOWN BROADCASTING CORP.
ALTAMONT, NEW YORK
CHANNEL 285 A 6 KW 100 M

FM SEPARATION STUDY

Job Title :WSRD at Altamont, NY

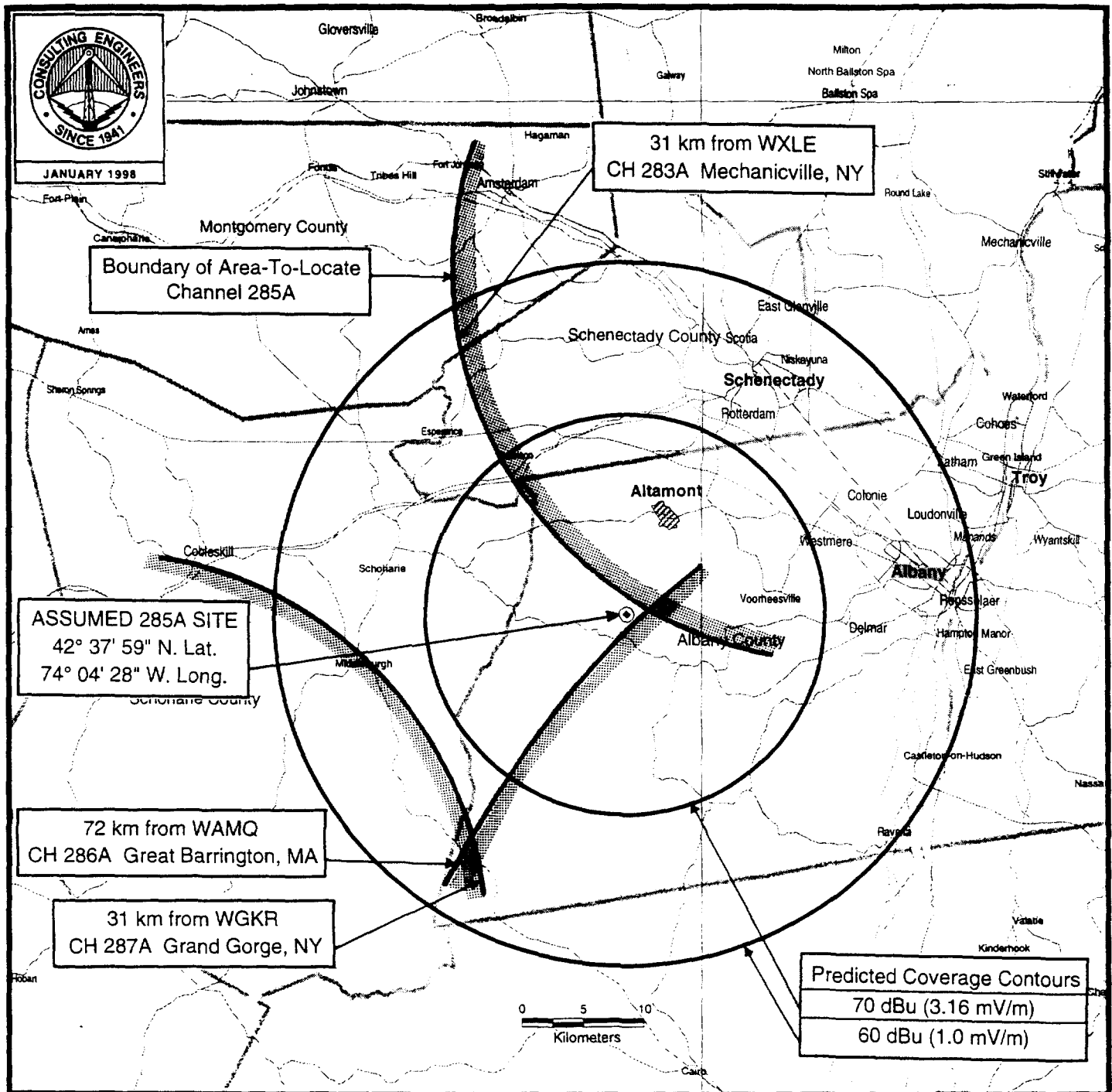
Separation Buffer 32 km

FCC DB Date : 01/23/98

Channel 285A (104.9 MHz)

Coordinates : 42-38-07 74-04-30

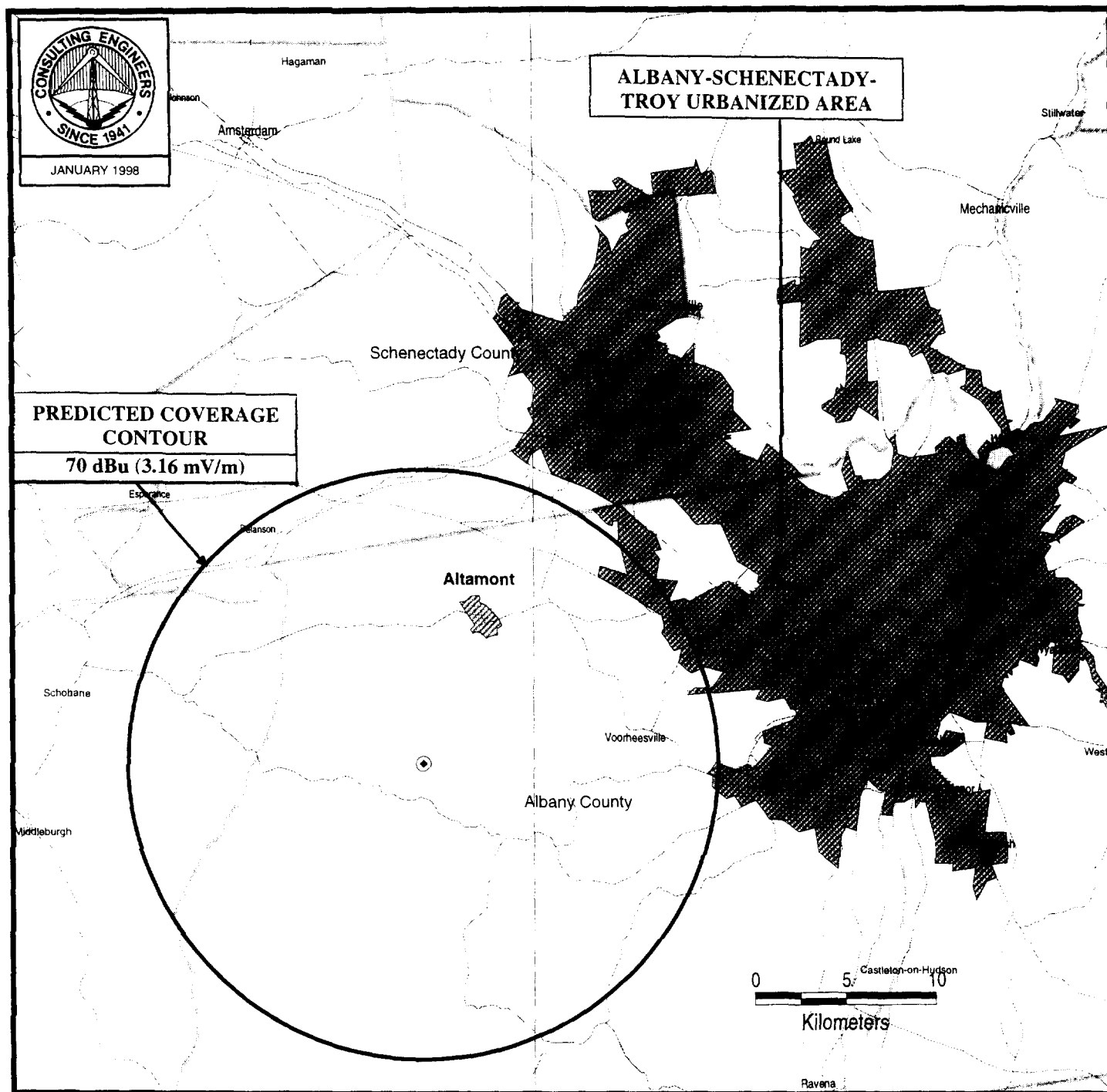
Call Status	City State	FCC File No.	Channel Freq.	ERP(kW) HAAT(m)	Latitude Longitude	Bearing deg-Tru	Dist. (km)	Req. (km)
WXLE LIC	Mechanicville NY	BLH930107KA	283A 104.5	5.0 107.0	42-52-44 73-51-47	32.5 SS	32.16 1.16	31 CLOSE
WSPK LIC	Poughkeepsie NY	BLH840802CR	284B 104.7	7.4 381.0	41-29-19 73-56-52	175.2	127.81 14.81	113 CLOSE
WSRD LIC	Johnstown NY	BLH4058	285A 104.9	3.00 91.0	43-03-14 74-25-27	328.7	54.57 -60.43	115 SHORT
WYRY LIC	Hinsdale NH	BLH870727KA	285A 104.9	1.55 139.0	42-46-33 72-27-19	82.7	133.63 18.63	115 CLEAR
WAMQ CP	Great Barrington MA	BPED960307IA	286A 105.1	0.73 DA 280.0	42-09-36 73-28-48	137.0 SS	72.03 .03	72 CLOSE
WAMQ LIC	Great Barrington MA	BLH881115KE	286A 105.1	1.1 159.0	42-09-46 73-28-26	136.6	72.15 .15	72 CLOSE
WGKR LIC	Grand Gorge NY	BLED970909KB	287A 105.3	.060 414.0	42-23-55 74-35-23	238.2 SS	49.81 18.81	31 CLEAR
WBECFM LIC	Pittsfield MA	BLH881202KD	288A 105.5	0.95 180.0	42-24-44 73-17-05	110.7	69.51 38.51	31 CLEAR



PREDICTED COVERAGE CONTOURS

FM STATION WSRD
ALTAMONT, NEW YORK
CH 285A 6kw 100m

du Treil, Lundin & Rackley Sarasota, Florida

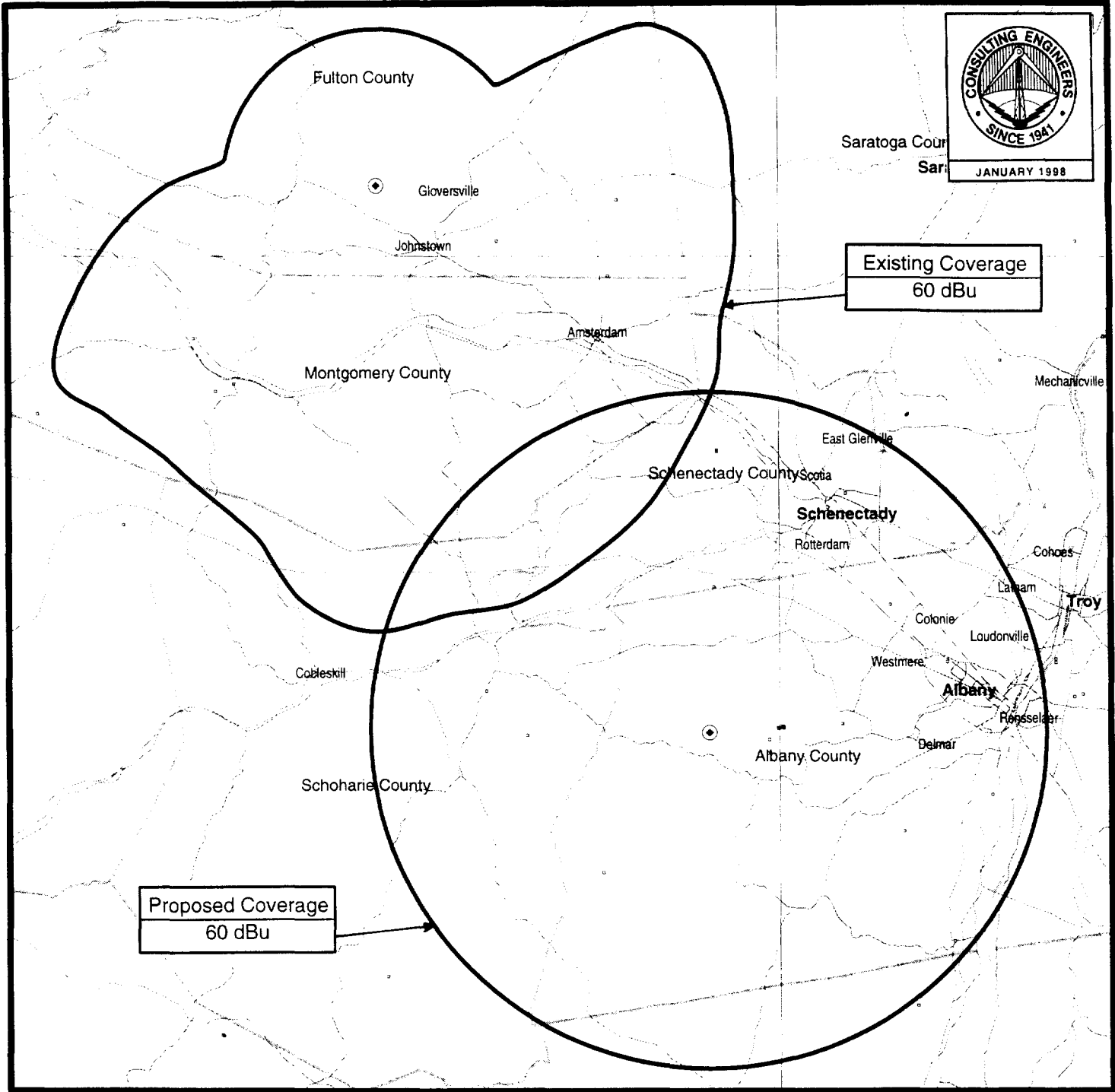


PREDICTED COVERAGE CONTOUR

FM STATION WSRD
ALTAMONT, NEW YORK
CH 285A 6kw 100m

du Treil, Lundin & Rackley Sarasota, Florida

Figure 3

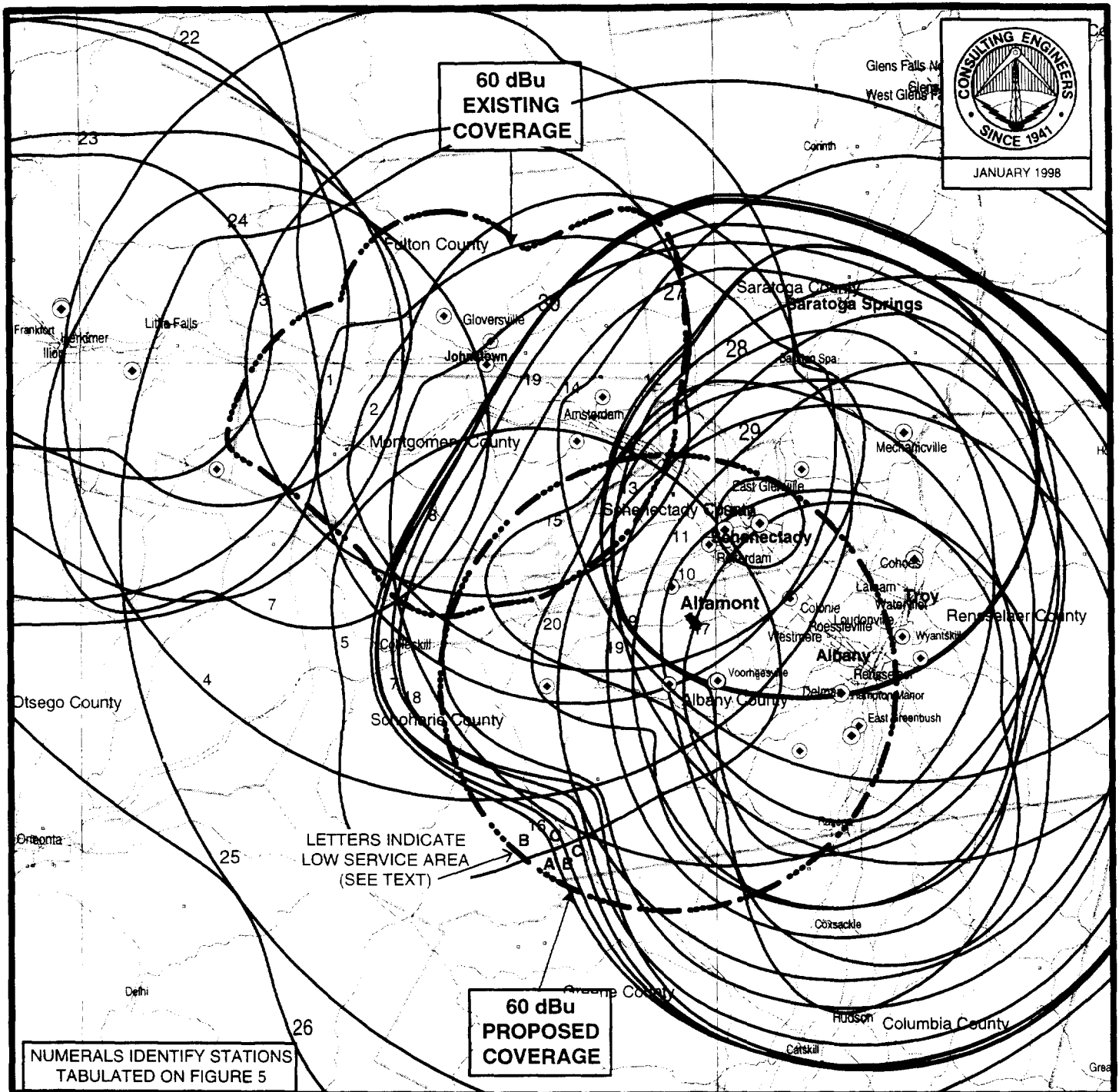


PREDICTED COVERAGE CONTOURS

FM STATION WSRD
ALTAMONT, NY
CH 285A 6kw 100m

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

Figure 4



**PREDICTED COVERAGE CONTOURS OF OTHER
SERVICES AVAILABLE WITHIN WSRD 60 dBu CONTOURS**

FM STATION WSRD
ALTAMONT, NEW YORK
CH 285A 6 kw 100m

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

ENGINEERING EXHIBIT
 IN SUPPORT OF RULE MAKING
 HOMETOWN BROADCASTING CORP.
 ALTAMONT, NEW YORK
 CHANNEL 285A 6 KW 100 M

Tabulation of other services within WSRD contours

<u>No.</u>	<u>Call Sign</u>	<u>Location (NY)</u>	<u>Frequency</u>
1	WBUG	Amsterdam	1570
2	WCSS	Amsterdam	1490
3	WENT	Gloversville	1340
4	WIZR	Johnstown	930
5	WMYY	Schoharie	97.3
6	WBUG	Fort Plain	101.1
7	WGNA	Albany	107.7
8	WPYX	Albany	106.5
9	WXLE	Mechanicville	104.5
10	WQBK	Rensselaer	103.9
11	WHRL	Albany	103.1
12	WXCR	Ballston Spa	102.3
13	WKLI	Albany	100.9
14	WRVE	Schenectady	99.5
15	WTRY	Troy	980
16	WYJB	Albany	95.5
17	WABY	Ravena	94.5
18	WFLY	Troy	92.3
19	WMHT	Schenectady	89.1
20	WVCR	Loudonville	88.3
21	WOUR	Utica	96.9
22	WKLL	Frankfort	94.9
23	WXUR	Herkimer	92.7
24	WOWB	Little Falls	105.5
25	WGY	Schenectady	810
26	WROW	Albany	590
27	WPIE	Trumansburg	1160
28	WHAZ	Troy	1330
29	WGNA	Albany	1460
30	WVKZ	Schenectady	1240
31	WNRS	Herkimer	1420

Figure 6

ENGINEERING EXHIBIT
IN SUPPORT OF RULE MAKING
HOMETOWN BROADCASTING CORP.
ALTAMONT, NEW YORK
CHANNEL 285A 6 KW 100 M

Tabulation of Population and Areas

	<u>Population (1990 Census)</u>	<u>Area (sq. km)</u>
Existing WSRD 60 dBu Contour - Johnstown, NY	108,748	2,169
Proposed WSRD 60 dBu Contour - Altamont, NY	404,145	2,516
Two Service Area	119	8
Three Service Area	484	38
Four Service Area	186	20
Five or More Services	403,356	2,450
Area Common to Existing and Proposed 60 dBu Contours	5,146	233
Net Loss of Service	103,602	1,936
Net Gain of Service	398,999	2,283